

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 55 Dare Lane, Pottstown, PA 19465

Address of Defendant: One Montgomery Plaza, Suite 800, 8th Floor, Norristown, PA 19404

Place of Accident, Incident or Transaction: \_\_\_\_\_  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed R Civ P 7 I(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

- 1 Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
- 2 Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
- 3 Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
- 4 Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A Federal Question Cases:

- 1 ☐ Indemnity Contract, Marine Contract, and All Other Contracts
- 2 ☐ FELA
- 3 ☐ Jones Act-Personal Injury
- 4 ☐ Antitrust
- 5 ☐ Patent
- 6 ☐ Labor-Management Relations
- 7 ☐ Civil Rights
- 8 ☐ Habeas Corpus
- 9 ☐ Securities Act(s) Cases
- 10 ☐ Social Security Review Cases
- 11 ☒ All other Federal Question Cases Violation of FMLA  
(Please specify)

B Diversity Jurisdiction Cases:

- 1 ☐ Insurance Contract and Other Contracts
- 2 ☐ Airplane Personal Injury
- 3 ☐ Assault, Defamation
- 4 ☐ Marine Personal Injury
- 5 ☐ Motor Vehicle Personal Injury
- 6 ☐ Other Personal Injury (Please specify)
- 7 ☐ Products Liability
- 8 ☐ Products Liability — Asbestos
- 9 ☐ All other Diversity Cases  
(Please specify)

### ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Edward C. Sweeney, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 4/12/12

Edward C. Sweeney  
Attorney-at-Law

64565

Attorney ID #

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F R C P. 38

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4/12/12

Edward C. Sweeney  
Attorney-at-Law

64565

Attorney ID #

JS 44 (Rev. 09/11)

## CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
**AMY MEDLEY**

(b) County of Residence of First Listed Plaintiff Chester  
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
**Edward C. Sweeney, Esquire 610-594-1600**  
**Wusinich, Brogan & Stanzione**  
**537 W. Uwchlan Ave., Suite 200, Downingtown, PA 19335**

**DEFENDANTS****COUNTY OF MONTGOMERY**

County of Residence of First Listed Defendant Montgomery  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. §2601, et seq.

Brief description of cause:  
Defendant violated the FMLA

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE

DOCKET NUMBER

DATE 4/12/12

SIGNATURE OF ATTORNEY OF RECORD

Edward C. Sweeney

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_



### **PARTIES**

3. Plaintiff is Amy Medley, a resident of Chester County, Pennsylvania who presently lives at 55 Dare Lane, Pottstown, PA 19465.

4. Defendant is County of Montgomery, a municipal governmental entity and/or public corporation organized and existing pursuant to the laws of the Commonwealth of Pennsylvania and maintains a business address c/o Montgomery County Commissioners, One Montgomery Plaza, Suite 800, 8th Floor, Norristown, PA 19404.

### **FACTUAL BACKGROUND**

5. Defendant employed Plaintiff as a nursing assistant who earned \$13.62 per hour.

6. Plaintiff's son, Anthony, has health conditions that qualify or would normally be considered to be covered as a serious health condition under the FMLA, including Asperger's Syndrome, developmental delay, and anxiety disorder.

7. Plaintiff requested intermittent leave under the FMLA because of Anthony's conditions.

8. Defendant employed at least 50 employees within a 75 mile radius of where Plaintiff worked.

9. Plaintiff had worked less than 1,250 hours of service credited during the twelve-month period immediately preceding the commencement of her FMLA, but notwithstanding, she was given to believe she had coverage under the FMLA, the County of Montgomery having a more liberal policy of family care leave that allowed full-time employees who complete three months of continuous service to be eligible for leave.

10. Defendant's official(s) told Plaintiff that she was qualified for and covered by intermittent Family and Medical Leave (hereafter "FMLA").

11. Defendant had Plaintiff execute various County of Montgomery FMLA forms that confirmed her entitlement to FMLA or would convince a reasonable person of FMLA eligibility.

12. Plaintiff was given official County of Montgomery policies that said she was eligible for "family care" leave of absence after continuous employment of three months.

13. Plaintiff started to be written up for FMLA intermittent leave absences.

14. On 4/19/11, Plaintiff spoke to H.R. official Beverly Jackson about a grievance she wanted to file for being written up for her intermittent FMLA absences.

15. Ms. Jackson tried to dissuade Plaintiff from filing a grievance and said 'nothing was going to be done to her,' but Plaintiff said she wanted to go ahead anyway and Ms. Jackson indicated they would meet again the following week to fill out the paperwork.

16. On 4/20/11, the very next day, Plaintiff was terminated.

17. Plaintiff was told she was fired because of FMLA leave she exercised on 4/17/11.

18. No one told Plaintiff at any time previous to 4/20/11 that she was not eligible for FMLA leave.

19. Plaintiff was approved for FMLA leave and was not designated a "key" employee.

20. Defendant violated the FMLA by interfering with Plaintiff's leave by giving her incorrect information about her leave eligibility under County policy and the FMLA.

21. Plaintiff earned \$13.62 per hour, worked 40 hours a week or more with Defendant, and received benefits.

22. Defendant without good faith and without reasonable grounds for believing that it did not violate the FMLA took adverse actions against Plaintiff, including termination, retaliating against her by giving her “points” for absence, and retaliating against her when it found out she might file a formal leave-related grievance.

23. The Plaintiff seeks, and the FMLA affords, appropriate remedies to an eligible employee if an employer has violated the FMLA, including but not limited to (1) wages, employment benefits or other compensation denied or lost by such violation, including but not limited to back and front pay; (2) an amount of liquidated damages unless the employer’s violation was in good faith and the employer had reasonable grounds for believing the employer did not violate the Act; and (3) equitable relief such as employment, reinstatement or promotion.

24. An employer found in violation of the FMLA must pay to the employee a reasonable attorney’s fee, the employee’s expert witness fees, and other costs of the action.

25. Plaintiff has sustained lost wages, lost benefits, and other privileges of employment as well as having suffered pain, suffering, humiliation, embarrassment, inconvenience, loss of life’s pleasures and other non-pecuniary losses under relevant law as a result of Defendant’s conduct.

26. The County of Montgomery has established more generous leave policies applicable to Plaintiff that interfered with her rights under the FMLA.

27. The County of Montgomery retaliated against Plaintiff for indicating she was going to file a grievance for violation of the Montgomery County leave policy.

28. Defendant made various oral and written representations and should be estopped from asserting that Plaintiff qualified for FMLA leave.

29. Plaintiff would have modified her conduct and dealt with her son's condition, other than taking the leave, if she had known that her employer would count as adverse incidents her intermittent taking of leave, and thus, detrimentally relied on employer's representations.

30. Defendant, by and through its managers, officials, and employees, by acts or representation intentionally or through culpable negligence induced Plaintiff to believe that certain facts existed regarding her right to FMLA leave or leave that would not be counted against her and she justifiably relied and acted upon such belief, so that she will be prejudiced if the Defendant is permitted to deny the existence of such facts.

### **COUNT I**

**PLAINTIFF AMY MEDLEY**

**vs.**

**DEFENDANT COUNTY OF MONTGOMERY**

#### **INTERFERENCE WITH EMPLOYEE'S ABILITY TO MEANINGFULLY EXERCISE HER RIGHT TO LEAVE**

31. Plaintiff incorporates paragraphs 1 through 30 herein by reference.

32. Any violation of the FMLA or the FMLA regulations constitute interfering with, restraining or denying the exercise of rights provided by the FMLA and violate 29 U.S.C. §2615(a)(1).

33. Defendant interfered with, restrained or denied the exercise of Plaintiff's FMLA rights by misleading Plaintiff as to her rights to FMLA or family leave for the care of her son, Anthony, including but not limited to her eligibility for FMLA or family leave.

34. Plaintiff was harassed in various ways in her effort to take leave and file a grievance when she was written up for taking approved leave and retaliated against for raising a grievance.



35. Plaintiff suffered prejudice.

36. Plaintiff suffered damages as a result of Defendant's conduct, including lost compensation and benefits and actual monetary losses, compensatory damages, liquidated damages, attorney's fees, costs and witness fees, and is entitled to equitable relief, including reinstatement.

37. Defendant's conduct was not in good faith.

WHEREFORE, Plaintiff demands the following relief: (1) wages, employment benefits or other compensation denied or lost by such violation; (2) an amount of liquidated damages unless the employer's violation was in good faith and the employer had reasonable grounds for believing the employer did not violate the Act; (3) compensatory damages including pain, suffering, humiliation, embarrassment, inconvenience, loss of life's pleasures and other non-pecuniary losses under relevant law; (4) equitable relief such as employment, reinstatement or promotion; (5) a reasonable attorney's fee; (6) the employee's expert witness fee, if any; (7) reinstatement to her former position (with all back benefits she would have been entitled to); (8) other costs of the action; and (9) interest.

## **COUNT II**

**PLAINTIFF AMY MEDLEY**

**vs.**

**DEFENDANT COUNTY OF MONTGOMERY**

**DISCRIMINATION IN VIOLATION OF  
THE FAMILY AND MEDICAL LEAVE ACT**

38. Plaintiff incorporates paragraphs 1 through 37 herein by reference.

39. Under the FMLA, an "eligible employee" is an employee of a covered employer who (1) has been employed by the employer for at least 12 months; (2) has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the



leave; and (3) is employed at a work site where 50 or more employees are employed by the employer within 75 miles of that work site.

40. Alternatively, Plaintiff can take advantage of Defendant's more liberal FMLA policy and still be a covered employee for FMLA purposes, particularly where it provided her specific representations and forms indicating that she was protected for the FMLA-designated leave/leave she took.

41. Plaintiff is an eligible employee under the FMLA who took FMLA leave.

42. Defendant unlawfully terminated, retaliated, and otherwise discriminated against Plaintiff because of conduct protected by the FMLA. See, *inter alia*, 29 U.S.C. §2615(a).

43. The Defendant did not act in good faith or otherwise acted intentionally, willfully, or wantonly.

44. Plaintiff has sustained damages as a result of Defendant's conduct.

WHEREFORE, Plaintiff demands the following relief: (1) wages, employment benefits or other compensation denied or lost by such violation, including but not limited to back and front pay; (2) an amount of liquidated damages unless the employer's violation was in good faith and the employer had reasonable grounds for believing the employer did not violate the Act; (3) compensatory damages including pain, suffering, humiliation, embarrassment, inconvenience, loss of life's pleasures and other non-pecuniary losses under relevant law; (4) equitable relief such as employment, reinstatement or promotion; (5) a reasonable attorney's fee; (6) the employee's expert witness fee, if any; (7) reinstatement to her former position (with all back benefits she would have been entitled to); (8) other costs of the action; and (9) interest.

**COUNT III**

**PLAINTIFF AMY MEDLEY**

**vs.**

**DEFENDANT COUNTY OF MONTGOMERY**

**EQUITABLE ESTOPPEL**

45. Plaintiff incorporates paragraphs 1 through 44 herein by reference.

46. Defendant, by and through its officials, managers, agents, and employees, made certain written and oral representations to Plaintiff that she could take intermittent FMLA to care for her son Anthony.

47. Plaintiff had a right to rely on the representations made to her.

48. Plaintiff detrimentally relied on those representations and was terminated because of her reliance.

49. Defendant should be equitably estopped because its acts or representations intentionally or through culpable negligence induced another, Plaintiff, to believe that certain facts existed and that person, Plaintiff, justifiably relied and acted upon such belief, so that Plaintiff would be prejudiced if the Defendant is permitted to deny the existence of such facts.

50. Plaintiff has sustained damages, including wage losses (back and front pay), loss of benefits, compensatory damages including pain, suffering, humiliation, embarrassment, inconvenience, loss of life's pleasures and other non-pecuniary losses under relevant law.

WHEREFORE, Plaintiff demands the following relief: (1) wages, employment benefits or

other compensation denied or lost by Employer's conduct; (2) compensatory damages including pain, suffering, humiliation, embarrassment, inconvenience, loss of life's pleasures and other non-pecuniary losses; (3) other costs of the action; and (4) interest.

Respectfully submitted,

Date: 4/12/2012

BY: s/Edward C. Sweeney  
Edward C. Sweeney, Esquire  
Attorney for Plaintiff  
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